

Economic Impact Statement

LSA Document #11-669

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

IC 4-22-2.1-5 requires an agency to submit a statement concerning the economic impact of any proposed rule on small businesses to the Indiana Economic Development Corporation (IEDC) and publish it in the Indiana Register. The proposed rule clarifies and supplements the Indiana Board of Tax Review's (Board) existing procedural rules and implements the voluntary resolution program authorized by IC 6-1.5-3-4, effective July 1, 2010. The analysis of the rule by the Board found the total savings to small businesses to be \$10,630 per year.

IC 4-22-2.1-5(a)(1): Estimated Number of Small Businesses Affected

The businesses directly affected by the Board's procedural rules would be those businesses that choose to appeal the property tax assessment on their real or personal property. Petitioners filed 856 appeals for property classified as commercial or industrial with the Board between January 1, 2011, and October 31, 2011. In addition, petitioners filed 21 personal property tax appeals with the Board during that time period. Because the Board does not require financial information for its petitioners, the exact number of businesses that qualify as small businesses is unknown. Further, some of the personal property tax appeals may be residential or agricultural in nature. In an effort to be conservative in its economic impact analysis, the Board will assume that all commercial, industrial, and personal property appeals were filed by small businesses.

IC 4-22-2.1-5(a)(2): Estimated Average Reporting, Record Keeping and Administrative Costs

The proposed rule imposes no reporting or record keeping costs on any business.

IC 4-22-2.1-5(a)(3): Estimated Annual Fiscal Impact

The proposed rule amends a filing requirement for petitioners represented by attorneys that are not licensed to practice in Indiana. However, since the requirement merely changes the entity with whom the petition is filed, rather than imposing any new filing requirement, the Board estimates that this provision has no cost to the small business community.

The proposed rule also clarifies that certified public accountants cannot represent clients in personal property tax exemption cases. The existing Board rules make clear that a tax representative cannot represent a client in an exemption matter. The amended rule makes clear that the prohibition applies to certified public accountants. Certified public accountants are already restricted to only representing clients in personal property tax matters before the Board. The Board is only aware of one instance in which an accountant attempted to represent a client in a personal property exemption matter. While such a restriction could result in small business hiring an attorney to represent it on a personal property exemption appeal, rather than a certified public accountant, the Board believes the cost difference would be minimal. Moreover, the small business could simply choose to represent itself before the Board on the exemption matter.

The proposed rule also amends the Board's rules to allow a hearing to be held in "any county in which an administrative law judge has an office" rather than "an adjacent county". The Board has field hearing officers located in several counties across the state. The proposed rule merely acknowledges that the hearing officer may not be located in an adjacent county, but may in fact be several counties away from the county in which property is located. In reality, hearings are almost always held either in the Board's central offices in Indianapolis or in the county in which the property is located. However, to the extent a hearing is held in a county in which an administrative law judge's office is located, the representative of a small business may incur travel expenses. The Board estimates that not more than 20 such hearings would occur in any one year and the average small business representative would have to travel less than 100 miles, resulting in an estimated cost of \$800.¹

In addition, the proposed rule requires a continuance request to be filed at least two days prior to the hearing or other deadline without a showing of extraordinary circumstances. This imposes no additional cost on small businesses and in fact may save parties the time and travel expense of attending a hearing where a party has sought a continuance too late for notice to reach a small business representative.

The proposed rule eliminates the requirement for an original and two copies of any brief be filed with the Board. This will save small businesses copy and mailing expense. The Board estimates that summary judgment motions and similar dispositive motions are filed in 5% of its cases, or approximately 45 small business cases.² If a brief and its attached exhibits averages 50 pages, parties would save 100 pages per filing, or approximately \$675 at \$0.15 per page. In addition, the cost of postage would decrease given the lighter weight of the filing. If the Board estimates the weight of filing to decrease by a pound, the motion can be filed as a large envelop rather than as a package with a corresponding savings that equates to almost \$14 a filing, or an estimated savings of \$630.

The proposed rule imposes a notice requirement on subpoenas duces tecum to be served upon a nonparty.

While this may incur a slight cost for drafting and mailing such a notice, the Board notes that requests for subpoenas are rare and requests for third party subpoenas even more so. The Board estimates that five subpoenas duces tecum will be filed by a small business on a third party. The rule requires that notice be given to the parties to the proceedings and time be allowed for objection. Based on an estimated 30 minute time to prepare and file the notice and an average cost of \$150 per hour for an attorney, the Board estimates the cost for this rule amendment would be \$375.

Finally the proposed rule establishes rules for the Board's voluntary resolution program. To date in 2011, the Board held 345 facilitations resulting in 239 appeals being resolved. If 10% of those facilitations were commercial properties, and 70% of them settled, eliminating the requirement for the taxpayer to file with the Board, the Board estimates that the cost savings to the small businesses would be \$10,500.³

IC 4-22-2.1-5(a)(4): Justification of Requirements

The savings to businesses and the clarity the proposed rule brings to the Board's appeal procedures outweigh and justify any costs that this rule might impose.

IC 4-22-2.1-5(a)(5): Regulatory Flexibility Analysis

The proposed rule clarifies and supplements the Board's existing procedural rules. It does not substantially change the Board's procedures. Nor does it impose substantial costs on any interested party. The alternative would be for the Board to continue with its existing procedural rules. The Supreme Court's amendments to Ind. R. Admis. Bar & Disc. Att'ys 3, § 2 *Admission of Attorneys: Temporary Admission on Petition*, promulgated on September 20, 2011, however, require a change to the Board's rules. Further, continuing with the Board's existing rules allows inefficiency and limitations on a party's representation to continue to the detriment of the regulated community.

¹ Assuming 20 appeals and an average commute of 100 miles at \$.40 a mile.

² Although the percentage of cases wherein a summary judgment motion is filed is significantly smaller than 5% of cases overall, it is the commercial and industrial appeals where such a motion is most likely to be filed. Therefore the Board assumed a 5% value to be conservative.

³ Based on the cost of filing a petition, preparing for hearing and attending a hearing before the Board, the Board estimates that each appeal resolved at the county level would save a taxpayer approximately \$1,500.

Posted: 02/01/2012 by Legislative Services Agency
An [html](#) version of this document.